

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 UNITED STATES OF AMERICA,

Case No.: 2:19-cr-00130-APG-NJK

4 Plaintiff

**Order Accepting Report and
Recommendation and Dismissing Case**

5 v.

[ECF Nos. 20, 38]

6 SILVANO GONZALEZ-CASTRO,

7 Defendant

8 On September 24, 2019, Magistrate Judge Koppe recommended that I grant defendant
9 Silvano Gonzalez-Castro's motion to dismiss because the Immigration Judge at the August 2004
10 deportation hearing failed to inform Gonzalez-Castro of his eligibility for voluntary departure.
11 ECF No. 38. The Government filed an objection. ECF No. 39.

12 I have conducted a de novo review of the issues set forth in the Report and
13 Recommendation under Local Rule IB 3-2. Judge Koppe's Report and Recommendation sets forth
14 the proper legal analysis and the factual basis to establish that Gonzalez-Castro's due process rights
15 were violated during his August 2004 removal hearing and the immigration court's removal order
16 was fundamentally unfair. I adopt her Report and Recommendation as my own, but supplement
17 it to expressly find that Gonzalez-Castro was prejudiced by this violation.

18 Gonzalez-Castro contends that the Immigration Judge never informed him of his eligibility
19 for voluntary departure. Docket No. 20 at 14-15. The United States has not rebutted this claim.
20 An alien is eligible for voluntary departure if he has not sustained a conviction for an aggravated
21 felony and has not engaged in terrorist activities. 8 U.S.C. §§ 1229c(a)(1), 1227(a)(2)(A)(iii),
22 1227(a)(4)(B). Gonzalez-Castro had sustained only a misdemeanor conviction for possession of
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1 marijuana by the time of his August 2004 removal hearing, so he was eligible for voluntary
2 departure.

3 The Ninth Circuit “has found prejudice where an alien’s rights are violated in a manner so
4 as potentially to affect the outcome of the proceedings.” *Campos-Sanchez v. I.N.S.*, 164 F.3d 448,
5 450 (9th Cir. 1999) (internal quotation and citation omitted) (*superseded by statute on other*
6 *grounds*). Had Gonzalez-Castro been told he was eligible for voluntary departure, he would have
7 requested it because it comes with fewer penalties and consequences than a deportation. The
8 Immigration Judge’s failure to inform him of that option deprived him of the chance to seek those
9 benefits. Thus, Gonzalez-Castro was prejudiced by the violation of his due process rights.

10 I HEREBY ORDER that Magistrate Judge Koppe’s Report and Recommendation (**ECF**
11 **No. 38**) **is accepted** as supplemented above, the defendant’s motion to dismiss (**ECF No. 20**) **is**
12 **granted**, and this case is DISMISSED. The clerk of the court is directed to close this case.

13 DATED this 19th day of November, 2019.

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17 ANDREW P. GORDON
18 UNITED STATES DISTRICT JUDGE
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